

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6709 of 1986

Date of decision: 17-01-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JASHBHAI PARSHOTAMDAS PATEL

Versus

GUJ INDUSTRIAL CO OP BANK LTD

Appearance:

MR JD AJMERA for Petitioners
MR ARUN H MEHTA for Respondent No. 1
Mr. K. B. Pujara for respondent No.5
None present for Respondent No. 2, 6

CORAM : MR.JUSTICE S.K.KESHOTE

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ORAL JUDGEMENT

The petitioner herein stood surety to the loan taken by respondents No.2, 3 and 4 from respondent No.1. They have not paid the amount of loan and as such lavad case has been filed by respondent No.1 -The Gujarat Industrial Cooperative Bank Ltd., before the Board of Nominees, which came to be decreed in favour of the Bank. Then the matter was taken in appeal by the petitioner and the appeal came to be dismissed. Hence this special civil application.

2. The case of the petitioner is that he was only surety and as such the bank should have first recovered the amount from the property of the debtors or from them and only in case nothing has been recovered, then it could have proceeded against the petitioner. On the other hand the counsel for the respondent Bank contended that the bank could have proceeded against surety as he also judgment debtor. It is not necessary for this court to go into the merits of the matter as in identical matter, which has been filed against the same award and order of the Tribunal, in special civil application No.4205 of 1984 statement has been made by the counsel appearing for the petitioner that the whole amount of the bank has already been recovered. The petitioner in that cognate matter, namely, Shri Arunbhai G. Patel is also a party to this petition as respondent No.6. Respondent No.6 was also one of the sureties of the loan taken by the loanees. The counsel for the Bank in this case submitted that he has no instructions. He further made statement that though he wrote letter to the Bank to give him instructions in the matter, the bank has even not cared to reply to his letter. Mr. K. B. Pujara, learned counsel appearing for respondent No.5 has admitted that the amount has been paid. This position has not been disputed by the counsel for the bank. Hence the statement made by the counsel for the bank in the other case, as well as the statement of Mr. K.B. Pujara, counsel for respondent No.5, is taken to be correct in this special civil application also. As the amount of loan has already been paid to the bank, nothing now survives in this special civil application.

3. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief stands vacated, with liberty to the party to apply to the court in case of difficulty. No order as to costs.

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